



U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530

January 11, 2018

By ECF and Fax

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Batalla Vidal, et al., v. Nielsen, et al.* 16-cv-4756 (NGG) (JO)
State of New York, et al. v. Trump, et al., 17-cv-5228 (NGG) (JO)

Dear Judge Garaufis:

Defendants write in response to the Court's order of January 11, 2018 requesting the parties' views on whether the argument currently scheduled for January 18, 2018 should be adjourned. Defendants respectfully submit that, for three reasons, an adjournment would be the most efficient way to proceed under the unique circumstances presented by the current status of this litigation.

1. As the Court noted in its January 11, 2018 order, this case is currently proceeding on two tracks: (1) an interlocutory appeal under 28 U.S.C. § 1292(b) regarding the jurisdiction and justiciability issues addressed in this Court's November 9, 2017 Memorandum and Order, and (2) proceedings in this Court regarding Defendants' pending motions to dismiss, Plaintiffs' motions for a preliminary injunction, and the *Batalla Vidal* Plaintiffs' motion for class certification. But all (or at least most) of those district-court proceedings will be unnecessary if the Second Circuit accepts some or all of the government's arguments on jurisdiction and justiciability. At a minimum, the landscape for any additional district-court litigation would be significantly altered. *See* Jan. 8, 2018 Mem. & Order, *Batalla Vidal* ECF No. 233, at 7. For that reason, it would be prudent to adjourn the January 18, 2018 argument date, to first allow proceedings to move forward in the Second Circuit.

2. On January 9, 2018, in parallel litigation challenging the rescission of DACA, the U.S. District Court for the Northern District of California (Alsup, J.) entered a preliminary injunction, which applies nationwide, including to these Plaintiffs in the Eastern District of New York. That order, with certain exceptions, requires Defendants "to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017." Defendants immediately began taking steps to comply with that order. Accordingly, there is currently no urgent need for resolution of this litigation before March 5, 2018. Whether or not these Plaintiffs are entitled to a preliminary injunction (a matter to be addressed further in Defendants' forthcoming opposition brief, due this Saturday, January 13, 2018), in the interim, Plaintiffs have already obtained the vast majority of the relief that they are seeking. So an adjournment of the upcoming argument date will not prejudice Plaintiffs.

3. Negotiations are ongoing regarding possible legislation involving the issues presented by this litigation. If such legislation is enacted, it might moot these cases or at least narrow them. Accordingly, it may be prudent for the Court to delay argument on these matters while those negotiations continue.

* * *

Defendants thank the Court for its consideration of this matter.

Respectfully submitted,

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